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MOTION

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1719

DR. JOSEPH T. SKEHAN,
Petitioner,

v.

BOARD OF TRUSTEES OF BLOOMSBURG STATE COLLEGE, DR. ROBERT NOSSEN, DR. CHARLES CARLSON, JOHN PITTENGER, Superintendent of Education, Commonwealth of Pennsylvania, and BLOOMSBURG STATE COLLEGE,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AT NOS. 77-2311 AND 77-2313.

MOTION TO AMEND PETITION FOR A WRIT OF CERTIORARI

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Dr. Joseph T. Skehan, petitioner, hereby moves the Court for leave to amend his petition for a writ of certiorari (filed May 15, 1979) to add a question, set forth below. Petitioner asks that, if this motion is granted, the petition be deemed amended without need to file a new version of the petition.

The additional question is as follows:

10. In light of this Court's decision in *Davis v. Passman*, ... U.S. ...., 99 S.Ct. 2264 (decided June 5, 1979), may a citizen recover damages against his own state when his claim for relief arises under the Fourteenth Amendment?

In *Davis*, the Court recognized an implied cause of action for damages under the due process clause of the Fifth Amendment against a member of Congress. The Court relied on such factors as: the absence of an explicit Congressional declaration that claimants may not recover money damages from Congressmen; and, the desirability of providing a judicial remedy to enforce Constitutional rights.

It would be inconsistent to allow a cause of action against a Congressman for damages but to bar such a cause of action against a state since the Fourteenth Amendment provides a stronger basis for allowing the cause of action.

Section 1 of the Fourteenth Amendment begins by defining citizens of states as persons who reside therein. The same section provides that no state shall deprive any person of life, liberty or property without due process of law. It is the relationship between the states and persons, and especially "citizens" of the states, that the Fourteenth Amendment was intended to regulate. Petitioner is within the class sought to be protected by the Fourteenth Amendment and the Commonwealth of Pennsylvania is within the class whose conduct was sought to be regulated. Petitioner pleaded violation of equal protection of the law in connection with all causes of action. As the Court observed in *Davis*, damages are the "ordinary" remedy for invasion of Constitutionally protected interests. 99 S. Ct., at 2276-2277.

The Courts below held that the damages remedy was barred by the Eleventh Amendment. However, the Eleventh Amendment does not explicitly regulate actions between citizens and their own states. It deals only with actions between citizens of other states and foreign states. The bar was implied by this Court in *Hans v. Louisiana*, 134 U.S. 1 (1889). This Court has already recognized that the bar of *Hans* has been superseded

in some instances by the Fourteenth Amendment. *Hutto v. Finney*, ... U.S. ...., 98 S.Ct. 2565 (1978); *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976).

Consistent with *Davis*, the Court should broaden the availability of damages remedies against the states under the Fourteenth Amendment to include petitioner's claim for back pay. *See, Butz v. Economou*, 438 U.S. 478 (1978); *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

Respectfully submitted,

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